IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY FIFTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

**THE HON'BLE MR JUSTICE G. BIKSHAPATHY**

**And**

**THE HON'BLE MR JUSTICE P.S.NARAYANA**

**WRIT PETITION NO : 21246 of 2002**

Between:

1 Union of India, represented by its Secretary, Ministry of Home Affairs, Government of India, North Block, New Delhi.
2 Appointments Committee of Cabinet, represented by its Cabinet Secretary, Cabinet Secretariat, Government of India, Rashtrapati Bhavan, New Delhi.

**..... PETITIONERS**

AND

Dr.Rajwant Singh IPS., Deputy Inspector General of Police, Government of Andhra Pradesh, Hyderabad.

**.....RESPONDENT**

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ of Certiorari or any other writ, order or direction or any other writ, calling for the records of the first respondent in M.A.No.93/02 and in R.A.No.19/02 in M.A.No.93/02 in O.A.No.1108/01 and to quash the order made dt.2-8-02 thereon directing the reconstruction of the records and consequently direct the Tribunal to forebear from further hearing of O.A.No.1108/01 without first deciding the issue of *res judicata* as a preliminary objection or in the alternative to direct the 1st respondent to dismiss the said O.A. on the ground that the same is barred by the principle of *res judicata* and to direct the Tribunal also to dismiss the M.A.No.368/02 filed in the application.

**Counsel for the Petitioners: MR.V.T.GOPALAN, ADDITIONAL SOLICITOR**

**GENERAL FOR MR. ANDAPALLI SANJEEV KUMAR, ADDITIONAL STANDING COUNSEL FOR CENTRAL GOVERNMENT.**

**Counsel for the Respondent: MR.K.PRATAP REDDY, SENIOR COUNSEL FOR MR.P.BHASKAR.**

**The Court made the following:**

ORAL ORDER: (per GB.J.)

The Writ Petition is filed by the Union of India assailing the order passed by the Central Administrative Tribunal (for brevity Tribunal) in R.A.No.19 of 2002 in M.A.No.93 of 2002 in O.A.No.1108 of 2001, dated 2.8.2002.

2. Though the matter has a chequered career, we are not inclined to refer to various events as the matter is still *sub judice* before the Tribunal. During the course of the arguments before the Tribunal, the respondent herein appears to have filed an application to call for the records from the Government of India in respect of certain Officers whose cases for change of cadre was favourably considered, and the same was responded by the Government of India stating that those files are not available with it. Considering the respective contentions, the Tribunal passed an order to reconstruct the file and place before it before the next date of hearing. The said order came to be challenged before this Court. For the sake of convenience, we are reproducing the order of the Tribunal, which reads thus—

> "We are of the view that if these files are not available, it is just and proper for the respondents to once again try to lay their hands on these two files and produce them for the perusal of the court. If they cannot lay their hands on the original files, it is just and proper on their part to reconstruct them before the next date of hearing".

3. Mr.V.T.Gopalan, the learned Additional Solicitor General appearing for Union of India submits that the order passed by the Tribunal is wholly illegal and contrary to law. He also submits that when the Government of India specifically stated before the Tribunal that the files are not available with the Department, the question of reconstruction doesn't arise. He further submits that the Tribunal lost sight of the situation that reconstruction would be possible only if the documents are available, but when the Department has specifically stated that the files are not available, the

question of directing reconstruction of the files and placing them before the Tribunal would not arise and therefore the order of the Tribunal is illegal and contrary to law and the same is liable to be set aside. Though the learned Additional Solicitor General tries to trace out the history of the case to contend that the respondent herein has been unnecessarily dragging on the litigation for several years, we are not inclined to go into the merits of the case.

4. Sri K.Pratap Reddy, the learned Senior Counsel appearing for the respondent submits that the Tribunal having satisfied that the files exist, directed reconstruction of the files and place the same before it and such an order cannot be said to be either illegal or contrary to law, and it is a discriminatory treatment shown towards the respondent by the petitioners, and if such documents are produced, no prejudice will be caused to the Government of India.

5. We have heard the learned counsel for the parties at length.

6. As noted above the Tribunal only directed reconstruction of the files and place them before it, but when the Government is expressing its inability to produce the files as they are not available with it, the Government of India cannot be compelled to produce the files which are not traceable nor available. Under those circumstances, we find that the Tribunal is required to proceed with O.A.No.1108 of2001 basing on the material available on record in accordance with law.

7. Though the learned Additional Solicitor General submits that if the documents are not placed before the Tribunal, it may be open for the Tribunal to take adverse inference, we are not inclined to record any finding on this aspect.

8. Under those circumstances, we dispose of the Writ Petition with a direction that the Tribunal shall dispose of O.A.No.1108 of 2001 basing on the material available in accordance with law within a period of two (02) months from the date of receipt of a copy of this order. No costs.

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(G.BIKSHAPATHY, J.)

25th February, 2005.

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(P.S.NARAYANA, J.)

SSR

Issue copy in three (3) das.

(BO)

To

1 The Secretary, Ministry of Home Affairs,
Government of India,, North Block, New Delhi.
2 The Cabinet Secretary, Cabinet Secretariat, Appointments Committee of Cabinet, Government of India, Rashtrapati Bhavan, New Delhi.

3 The Registrar, Central Administrative Tribunal, Hyderabad Bench.

4 2 CD copies.

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